

# **EXHIBIT C**

Ven-A-Care (T. Mark Jones)

March 18, 2008

Miami, FL

Page 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

- - - - -  
IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-A-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc., )  
vs. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

(Captions continued on following pages)

VOLUME I

DEPOSITION OF VEN-A-CARE (T. MARK JONES)

Videotaped deposition of T. Mark Jones, held at  
the Law Offices of Hunton & Williams, LLP, 1111  
Brickell Avenue, Suite 2500, Miami, Florida, 33131,  
on Tuesday, March 18, 2008, commencing at 9:06 a.m.,  
before Donald W. McKay, RMR, CRR, a Notary Public  
for the State of Florida.

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

Ven-A-Care (T. Mark Jones)

March 18, 2008

Miami, FL

Page 2	Page 4
<p>1        UNITED STATES DISTRICT COURT  2        FOR THE DISTRICT OF MASSACHUSETTS  3        -----  4        IN RE: PHARMACEUTICAL      ) MDL NO. 1456  5        INDUSTRY AVERAGE WHOLESALE    ) CIVIL ACTION  6        PRICE LITIGATION            ) 01-CV-12257-PBS  7        THIS DOCUMENT RELATES TO    )  8        U.S. ex rel. Ven-A-Care of    ) Judge Patti B. Saris  9        the Florida Keys, Inc.,      )  10      et al.,                      ) Chief Magistrate  11      vs.                        ) Judge Marianne B.  12      Boehringer Ingelheim      ) Bowler  13      Corporation, et al.,      )  14      No. 07-CV-10248-PBS      )  15      -----  16  17  18  19  20  21  22</p>	<p>1        COMMONWEALTH OF KENTUCKY  2        FRANKLIN CIRCUIT COURT - DIV. I  3        -----  4        COMMONWEALTH OF KENTUCKY,      )  5        ex rel. JACK CONWAY,            )  6        ATTORNEY GENERAL,              ) Civil Action  7        Plaintiff,                    ) No. 04-CI-1487  8        vs.                        )  9        ALPHARMA USPD, INC., et al., )  10      Defendants.                )  11      -----  12  13  14      IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA  15      -----  16      In the Matter of,              )  17      ALABAMA MEDICAID PHARMACEUTICAL) Master Docket  18      AVERAGE WHOLESALE PRICE      ) No. CV-2005-219  19      LITIGATION                )  20      -----  21  22</p>

  

Page 3	Page 5
<p>1        IN THE DISTRICT OF TRAVIS COUNTY, TEXAS  2        -----  3        THE STATE OF TEXAS, ex rel.    )  4        VENA-A-CARE OF THE FLORIDA    )  5        KEYS, INC.,                    )  6        Plaintiffs,                ) Cause No.  7        vs.                        ) GV401286  8        ABBOTT LABORATORIES, INC.,    )  9        et al.,                    )  10      Defendants.                )  11      -----  12  13      UNITED STATES DISTRICT COURT  14      FOR THE DISTRICT OF MASSACHUSETTS  15      -----  16      COMMONWEALTH OF MASSACHUSETTS, )  17      Plaintiff,                )  18      vs.                        ) Civil Action  19      MYLAN LABORATORIES, INC.,    ) No. 03-CV-11865-PBS  20      et al.,                    )  21      Defendants.                )  22      -----</p>	<p>1        IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  2        OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA  3        -----  4        STATE OF IDAHO,              )  5        Plaintiff,                ) Case No.  6        vs.                        ) CV OC 0701847  7        ALPHARMA USPD, INC., et al., )  8        Defendants.                )  9        -----  10  11  12      COMMONWEALTH OF KENTUCKY  13      FRANKLIN CIRCUIT COURT - DIV. III  14      -----  15      COMMONWEALTH OF KENTUCKY,      )  16      Plaintiff,                ) Civil Action  17      vs.                        ) No. 03-CI-1134  18      ABBOTT LABORATORIES, INC.,    )  19      Defendant.                )  20      -----  21  22</p>

2 (Pages 2 to 5)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Ven-A-Care (T. Mark Jones)

March 18, 2008

Miami, FL

<p style="text-align: right;">Page 90</p> <p>1 to come up with Red Book, you're basing that upon    2 documents you've read in your investigation,    3 people with whom you've spoken in your    4 investigation. Do I have that correct?</p> <p>5 A. Documents that we've reviewed, yes.    6 People that we've spoken with, yes. I've also --    7 but again, I've seen -- Abbott has given Ven-A-    8 Care, you know, over the years, fliers on drugs    9 which shows their list price and their AWP as    10 well.</p> <p>11 Q. I can represent to you that there is    12 not a single piece of paper that Ven-A-Care has    13 provided to any state, any government law    14 enforcement agency that we have, or to Abbott    15 that would have a flier showing both Abbott's AWP    16 and Abbott's list price. Can you point me to    17 one?</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 THE WITNESS: To Zovirax.</p> <p>20 BY MR. COOK:</p> <p>21 Q. For Zovirax, that would be the fax that    22 you requested from Dennis Walker. Right?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. And you'll agree with me that that    2 piece of paper states on the face of it that Mr.    3 Bentley had requested that information from    4 Dennis Walker. Correct?</p> <p>5 A. I'd have to see it to tell you yes.</p> <p>6 Q. Now, in this case, you'll agree with me    7 that there are literally hundreds, if not    8 thousands of drug advertisements contained in    9 material that Ven-A-Care collected over the years    10 as part of its investigation. Right?</p> <p>11 A. It's hard to quantify.</p> <p>12 Q. A lot. Right?</p> <p>13 A. There is -- yes. Ven-A-Care has    14 provided a lot of that.</p> <p>15 Q. Can you point me to any of those that    16 Abbott issued that compared Abbott's AWP to    17 Abbott's list price for its generic drugs?</p> <p>18 MR. BREEN: Objection to form.</p> <p>19 THE WITNESS: That I didn't see in    20 discovery? Is that the question?</p> <p>21 BY MR. COOK:</p> <p>22 Q. That Ven-A-Care found in its</p>
<p style="text-align: right;">Page 91</p> <p>1 A. That would be what I'm talking about.</p> <p>2 Q. That was a fax that -- so, on one    3 occasion, Zach Bentley called Michael Heggie, and    4 Dennis Walker called him back, and Mr. Bentley    5 requested the AWP for Acyclovir, a new drug that    6 Abbott was coming out with. Correct?</p> <p>7 MR. BREEN: Objection, form.</p> <p>8 THE WITNESS: I don't recall how Mr.    9 Bentley testified that he did it -- because I    10 didn't do it. So I don't want to tell you yes,    11 that's correct. I think that there are some    12 elements there. I think that Acyclovir was    13 introduced to Ven-A-Care through the GPO for    14 Abbott, now that I'm thinking back.</p> <p>15 BY MR. COOK:</p> <p>16 Q. But in terms of an Abbott document that    17 compared the AWP for its generic to the list    18 price for its generic, the only piece of paper    19 that you have in mind is this facsimile that    20 Dennis Walker sent to Mr. Bentley. Correct?</p> <p>21 A. It's the only piece of paper I have in    22 mind at this moment, yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 investigation. We can move on to discovery in a    2 minute.</p> <p>3 A. Not right now.</p> <p>4 Q. And in discovery, have you seen any    5 documents, advertisements, for the drugs in this    6 case, in which Abbott compared the AWP to its    7 list price, again leaving aside the facsimile    8 from Dennis Walker to Zach Bentley?</p> <p>9 A. Well, I have seen -- certainly seen    10 Abbott compare -- complying with GPO contracts    11 and listing out their prices with their AWP's    12 showing percentage spreads, sometimes showing a    13 comparative to another competitor.</p> <p>14 Q. These would be printouts from Group    15 Purchasing Organizations. Correct?</p> <p>16 A. They would be Abbott's contracts with    17 GPO's or Abbott's RFP's that I've seen.</p> <p>18 Q. So this would be Abbott responding to    19 questions posed by GPO's about Abbott's drugs.    20 Correct?</p> <p>21 MR. BREEN: Objection to form.</p> <p>22 THE WITNESS: This would be Abbott</p>

24 (Pages 90 to 93)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Page 346

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

- - - - -  
IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-A-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc., )  
vs. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

(Captions continued on following pages)

VOLUME II - CONTAINS HIGHLY CONFIDENTIAL PORTIONS

DEPOSITION OF VEN-A-CARE (T. MARK JONES)

Videotaped deposition of Ven-A-Care (T. Mark Jones), held at the Law Offices of Hunton & Williams, LLP, 1111 Brickell Avenue, Suite 2500, Miami, Florida, 33131, on Wednesday, March 19, 2008, commencing at 8:59 a.m., before Donald W. McKay, RMR, CRR, a Notary Public for the State of Florida.

Miami, FL

Page 347		Page 349	
1	UNITED STATES DISTRICT COURT	1	COMMONWEALTH OF KENTUCKY
2	FOR THE DISTRICT OF MASSACHUSETTS	2	FRANKLIN CIRCUIT COURT - DIV. I
3	-----	3	-----
4	IN RE: PHARMACEUTICAL ) MDL NO. 1456	4	COMMONWEALTH OF KENTUCKY, )
5	INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION	5	ex rel. JACK CONWAY, )
6	PRICE LITIGATION ) 01-CV-12257-PBS	6	ATTORNEY GENERAL, ) Civil Action
7	THIS DOCUMENT RELATES TO )	7	Plaintiff, ) No. 04-CI-1487
8	U.S. ex rel. Ven-A-Care of ) Judge Patti B. Saris	8	vs. )
9	the Florida Keys, Inc., )	9	ALPHARMA USPD, INC., et al., )
10	et al., ) Chief Magistrate	10	Defendants. )
11	vs. ) Judge Marianne B.	11	-----
12	Boehringer Ingelheim ) Bowler	12	
13	Corporation, et al., )	13	
14	No. 07-CV-10248-PBS )	14	IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA
15	-----	15	-----
16		16	In the Matter of, )
17		17	ALABAMA MEDICAID PHARMACEUTICAL) Master Docket
18		18	AVERAGE WHOLESALE PRICE ) No. CV-2005-219
19		19	LITIGATION )
20		20	-----
21		21	
22		22	
Page 348		Page 350	
1	IN THE DISTRICT OF TRAVIS COUNTY, TEXAS	1	IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
2	-----	2	OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
3	THE STATE OF TEXAS, ex rel. )	3	-----
4	VENA-A-CARE OF THE FLORIDA )	4	STATE OF IDAHO, )
5	KEYS, INC., )	5	Plaintiff, ) Case No.
6	Plaintiffs, ) Cause No.	6	vs. ) CV OC 0701847
7	vs. ) GV401286	7	ALPHARMA USPD, INC., et al., )
8	ABBOTT LABORATORIES, INC., )	8	Defendants. )
9	et al., )	9	-----
10	Defendants. )	10	
11	-----	11	
12		12	COMMONWEALTH OF KENTUCKY
13	UNITED STATES DISTRICT COURT	13	FRANKLIN CIRCUIT COURT - DIV. III
14	FOR THE DISTRICT OF MASSACHUSETTS	14	-----
15	-----	15	COMMONWEALTH OF KENTUCKY, )
16	COMMONWEALTH OF MASSACHUSETTS, )	16	Plaintiff, ) Civil Action
17	Plaintiff, )	17	vs. ) No. 03-CI-1134
18	vs. ) Civil Action	18	ABBOTT LABORATORIES, INC., )
19	MYLAN LABORATORIES, INC., ) No. 03-CV-11865-PBS	19	Defendant. )
20	et al., )	20	-----
21	Defendants. )	21	
22	-----	22	

2 (Pages 347 to 350)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

Page 367	Page 369
<p>1 submitting a false document, and you were not  2 concealing any material fact from Florida  3 Medicaid for payment of this -- of these funds.  4 Right?</p> <p>5 A. Right.</p> <p>6 Q. Thank you.</p> <p>7 I'd like to ask you some questions --  8 Mr. Jones, if I were to ask you the exact same  9 questions as Ven-a-Care's corporate  10 representative, would your answers be the same?</p> <p>11 MR. BREEN: Objection to form.</p> <p>12 THE WITNESS: Yes. I think that it  13 would be similar.</p> <p>14 BY MR. COOK:</p> <p>15 Q. Similar --</p> <p>16 A. The same.</p> <p>17 Q. I would like to ask you some questions  18 specifically as a 30(b)(6) witness. And that is,  19 we looked at some Medicaid claim forms yesterday,  20 we looked at some Medicare claim forms, and we  21 looked at some Explanations of Benefits, both  22 from Medicare and Medicaid. Are there any other</p>	<p>1 has produced all of the records that would  2 pertain to this case that it has.</p> <p>3 BY MR. COOK:</p> <p>4 Q. Okay. Just so we're real clear -- and  5 I want the record to be clear why I'm asking you  6 this -- we have been unable to locate any claims  7 forms or EOB's for the subject drugs that Ven-a-  8 Care submitted that indicated that they were  9 submitting a claim to Medicare or Medicaid for  10 Abbott's drugs. For example, the dextrose was a  11 McGaw product. Right?</p> <p>12 A. Yes.</p> <p>13 Q. We believe that's significant. And as  14 the corporate designee, I'm asking you now, can  15 you point me to any so that I don't hear in a  16 response to a motion for summary judgment that,  17 in fact, there is one, if I say there are not  18 any?</p> <p>19 A. I can't point you to one right now, as  20 I sit here, no.</p> <p>21 Q. All right. And as a corporate  22 designee, I'm asking you the unqualified</p>
<p style="text-align: center;">Page 368</p> <p>1 Medicaid or Medicare claims forms or Explanations  2 of Benefits that would relate specifically to the  3 drugs at issue in either the Texas litigation or  4 the Department of Justice litigation with Abbott?</p> <p>5 MR. BREEN: Objection to form. If  6 you're going to ask him as a designee, I'd like  7 to know what designation this is under.</p> <p>8 MR. COOK: Sure. Let me pull it out.  9 Well, among other things, it's pursuant to the  10 earlier designation for document witnesses that  11 we examined Mr. Jones about before. Does that  12 satisfy you?</p> <p>13 MR. BREEN: The accuracy and validity  14 and completeness of documents, perhaps.</p> <p>15 MR. COOK: Yes, sir. I'm simply asking  16 if there are any other claims forms or  17 Explanations of Benefits for Medicare or Medicaid  18 for any of the subject drugs that Ven-a-Care can  19 provide to us.</p> <p>20 MR. BREEN: If he can answer that  21 question off the top of his head, fine.</p> <p>22 THE WITNESS: I believe that Ven-a-Care</p>	<p style="text-align: center;">Page 370</p> <p>1 question, are there any?</p> <p>2 MR. BREEN: Objection to form.</p> <p>3 MR. COOK: Let me restate that.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Are there any that Ven-a-Care can  6 produce?</p> <p>7 MR. BREEN: Objection to form.</p> <p>8 MR. COOK: What is the objection to  9 form?</p> <p>10 MR. BREEN: I think it's a misleading  11 question. You're asking him if there is any they  12 can produce. He's testified they produced  13 everything in their possession. He's also  14 testified about the events that -- following  15 Hurricane George. And you're asking him to  16 certify that you have found everything in our  17 production that might relate. I don't think  18 that's a proper question.</p> <p>19 MR. COOK: I'll ask it very clearly.</p> <p>20 BY MR. COOK:</p> <p>21 Q. Does Ven-a-Care today have in its  22 possession any Explanation of Benefits or</p>

7 (Pages 367 to 370)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

<p style="text-align: right;">Page 379</p> <p>1 could have done so, and you didn't do it. So if 2 you're going to insist that he ask as a corporate 3 -- answer as a corporate representative, I'm 4 going to interpose an objection and I'm going to 5 interpose an instruction that he not respond to 6 the question.</p> <p>7 MR. COOK: You can do so, Jim, but I am 8 asking for all documents.</p> <p>9 MR. BREEN: You may be asking for all 10 documents, but you didn't ask for him to marshal 11 this particular kind of evidence. So, if you 12 did, I want you to point me to the designation.</p> <p>13 MR. COOK: Jim, it's clearly subsumed 14 within our earlier designation asking for the 15 completeness and the content of Ven-a-Care's 16 document production. I am more than happy to 17 suggest that -- I don't think Ven-a-Care can do 18 it. What I would ask you to do is if Ven-a-Care 19 can do this, either provide a written response, 20 and then we can discuss whether there would be 21 very limited reconvening of the 30(b)(6) 22 deposition to ask the questions related to it.</p>	<p style="text-align: right;">Page 381</p> <p>1 saying. But it's a different designation than 2 you've given. And the Court has entered orders 3 at Abbott's request that not one word of these 4 designations are going to be changed in terms of 5 the pending 30(b)(6) designations. So I don't 6 think this has been designated.</p> <p>7 I will take what you're saying under 8 consideration. Obviously, if it's going to be an 9 issue that you're going to raise in motion 10 practice, it's going to have to be responded to 11 anyway. So I'm not necessarily saying we won't 12 do this. I just don't think we're required to do 13 it by the current designation. I'd like a chance 14 to think about it.</p> <p>15 MR. COOK: Take a look at our original 16 designations from a year ago last March relating 17 to the document requests, and I believe they do 18 fairly require Ven-a-Care to certify that each of 19 our requests has been fully responded to. And I 20 have no doubt that they have been. I simply want 21 a witness to tell me there are no documents that 22 fit within this category that was requested in</p>
<p style="text-align: right;">Page 380</p> <p>1 If Ven-a-Care cannot do so, simply tell me so in 2 a letter or in written testimony or an affidavit. 3 I simply want to make sure that I don't get 4 sandbagged or blindsided at summary judgment if I 5 tell the Court that Ven-a-Care cannot provide 6 that evidence. That's all I'm asking.</p> <p>7 MR. BREEN: I understand what you're 8 trying to do, Chris. And I respect what you're 9 trying to do. The problem is Ven-a-Care will 10 testify that it provided all the documents in its 11 possession, custody or control that were 12 responsive to your discovery requests. Ven-a- 13 Care has not been asked, in any designation, to 14 marshal the evidence that you're asking this 15 witness to marshal now. Now, hold on. Let me 16 just finish.</p> <p>17 MR. COOK: We asked it in RFP's, Jim. 18 We asked for each piece of that chain in an RFP. 19 I'm simply asking whether, in response to that 20 RFP, documents exist; or if the answer is, "We 21 have no such documents." That's all I'm asking.</p> <p>22 MR. BREEN: I understand what you're</p>	<p style="text-align: right;">Page 382</p> <p>1 certain of our RFP's.</p> <p>2 MR. BREEN: I understand what you're 3 asking.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Is it fair to say, Mr. Jones, that in 6 filing Ven-a-Care's various lawsuits in this 7 case, its original complaint, its Second Amended 8 Complaint, all the way through its Fourth Amended 9 Complaint, and adopting the government's 10 complaints in intervention, that Ven-a-Care has 11 not undertaken the process of putting together 12 the chain of documents showing the lifespan of a 13 reimbursed drug in the way that I've asked you 14 today? Right?</p> <p>15 MR. BREEN: Objection to form.</p> <p>16 THE WITNESS: I don't believe in the 17 way you asked me today.</p> <p>18 BY MR. COOK:</p> <p>19 Q. And I'm asking you as a corporate 20 designee, has Ven-a-Care, in filing its lawsuits 21 -- and this may short-circuit going through 22 individual complaints -- as to each of the drugs</p>

10 (Pages 379 to 382)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

Page 383	Page 385
<p>1 that Ven-a-Care named in its various lawsuits,  2 has Ven-a-Care made certain that it actually  3 purchased each of the drugs named in each of the  4 lawsuits?</p> <p>5 MR. BREEN: Objection to form.</p> <p>6 THE WITNESS: I don't believe Ven-a-  7 Care has purchased every drug in each of the  8 lawsuits.</p> <p>9 BY MR. COOK:</p> <p>10 Q. And where the lawsuits -- in the  11 complaints, it says Ven-a-Care's price, is it a  12 fair characterization that when Ven-a-Care lists  13 Ven-a-Care's price in a complaint, that is a  14 price at which Ven-a-Care could purchase the  15 product, not necessarily a price at which Ven-a-  16 Care did purchase that particular NDC?</p> <p>17 A. The prices that are listed in the  18 complaint represent prices that are available to  19 Ven-a-Care, either through GPO's, wholesalers,  20 direct with companies.</p> <p>21 Q. And if I were to -- Exhibit 414 is a  22 good inch thick. It's the various complaints</p>	<p>1 (Exhibit Abbott 707 was thereupon  2 marked.)</p> <p>3 (Exhibit Abbott 708 was thereupon  4 marked.)</p> <p>5 BY MR. COOK:</p> <p>6 Q. Exhibit 707 is our Notice of Deposition  7 to you, Mr. Jones, our 30(b)(6) notice to you.</p> <p>8 A. Um-hmm.</p> <p>9 Q. And more importantly, Exhibit 708 is  10 the document that we attached as Exhibit A, which  11 was my November 21, 2007 letter, laying out the  12 topics on which we were asking to examine a  13 corporate representative of Ven-a-Care. And I'm  14 asking you right now about topics 1 and 2(a);  15 that is, the evidence and facts that support or  16 contradict allegations in your complaints.</p> <p>17 A. Um-hmm.</p> <p>18 Q. And the veracity and good-faith basis  19 for the statements made in Ven-a-Care's  20 complaints.</p> <p>21 It's your understanding, of course,  22 that Ven-a-Care has adopted the government's</p>
Page 384	Page 386
<p>1 that Ven-a-Care has filed. If I were to walk you  2 through each of the perhaps hundreds, but at  3 least dozens of NDC's in those complaints, is it  4 fair to say you would not be able to tell me,  5 yes, we purchased that drug and here is an  6 invoice for it; no, we didn't purchase this drug,  7 we have no invoice for it?</p> <p>8 MR. BREEN: Objection to form.</p> <p>9 THE WITNESS: I would have an idea of  10 which drugs we purchased. I don't think I could  11 point to invoices where we purchased it, when,  12 you know. I know what the time frame would be  13 for the drugs, but no, I couldn't -- you couldn't  14 point to every drug and I could give you that  15 information.</p> <p>16 BY MR. COOK:</p> <p>17 Q. So to the extent -- and this is one of  18 the designations -- in fact, let's go ahead and  19 mark the Notice of Deposition and the  20 designations so it will be clear what I'm asking  21 you about.</p> <p>22 We'll mark this as Exhibit 707 and 708.</p>	<p>1 complaint in intervention as its own. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. So I'll get you to look at the  4 government's First Amended Complaint as the  5 operative complaint in this case. And attachment  6 one to that complaint or Exhibit 1 to that  7 complaint is a list of the drugs that are at  8 issue in the complaint. And for the record, what  9 you're looking at is a copy of Exhibit 547, which  10 is the First Amended Complaint in this case.</p> <p>11 And looking at Exhibit 1 to Exhibit  12 547, can you tell me which of those drugs did  13 Ven-a-Care purchase?</p> <p>14 MR. BREEN: Objection to form.</p> <p>15 THE WITNESS: Specifically? I can tell  16 you Ven-a-Care has purchased Abbott's dextrose  17 solutions, it's purchased its sodium chloride  18 solutions, its Vancomycins, and its bacteria  19 static water.</p> <p>20 BY MR. COOK:</p> <p>21 Q. Has Ven-a-Care purchased Abbott's  22 Acyclovir?</p>

Miami, FL

<p style="text-align: right;">Page 387</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. The dextrose solution -- there are a 3 number of NDC's for dextrose solution listed.</p> <p>4 Right?</p> <p>5 A. (Nods head in the affirmative).</p> <p>6 Q. Are you able to tell me which NDC's 7 Ven-a-Care purchased?</p> <p>8 A. Only if I could look at the invoices 9 that I have that would allow me to identify the 10 NDC's. And then the other issue is that 11 sometimes -- well, not just sometimes -- many of 12 these NDC's have changed over the years. Like 13 from '92 to 2000. There may be an NDC change 14 that represents the same drug. This may be -- 15 what I'm saying is this may be like a 2006 NDC 16 that might have been a different NDC back in '95 17 or '96.</p> <p>18 Q. Does Ven-a-Care have invoices from 19 which you could determine whether Ven-a-Care 20 purchased those NDC's of Abbott's dextrose?</p> <p>21 MR. BREEN: Objection to form. Asked 22 and answered.</p>	<p style="text-align: right;">Page 389</p> <p>1 chloride, Vancomycin and water?</p> <p>2 A. You mean from my body, give it to you, 3 other than my memory?</p> <p>4 Q. Can you point me to any -- specifically 5 to any evidence to support your contention that 6 Ven-a-Care purchased these drugs?</p> <p>7 MR. BREEN: Objection to form.</p> <p>8 THE WITNESS: Ven-a-Care turned over 9 invoices of purchases. They should be in your 10 possession. I can't tell you what the Bates 11 ranges are off the top of my head.</p> <p>12 BY MR. COOK:</p> <p>13 Q. The same would be true for the other 14 drugs, other than dextrose. Is that correct?</p> <p>15 A. Other than?</p> <p>16 Q. Well, the sodium chloride, the Vanco, 17 and the water, the same would be true for those. 18 Right?</p> <p>19 A. Yes.</p> <p>20 MR. COOK: Jim, before we get too far 21 away from Exhibit 708, the specifications, it's 22 my understanding that in the interest of</p>
<p style="text-align: right;">Page 388</p> <p>1 THE WITNESS: Ven-a-Care has invoices 2 that reflect what we've purchased. And I would 3 have to look at them to see.</p> <p>4 BY MR. COOK:</p> <p>5 Q. But you're not able to testify today to 6 all of the evidence and facts supporting those 7 particular allegations in the complaint. Right?</p> <p>8 MR. BREEN: I'm going to interpose an 9 objection now to the designation, itself. We've 10 already alerted you of those objections. I don't 11 think it's proper to ask this witness to sit here 12 and marshal every piece of evidence relating to 13 every allegation in every complaint or other 14 representation that Ven-a-Care has made as a 15 broad question. No witness could possibly 16 remember all of that. And that's exactly the 17 nature of your question right now.</p> <p>18 BY MR. COOK:</p> <p>19 Q. Other than your personal memory, are 20 you able to provide me, sitting here today, any 21 other evidence to support your contention that 22 Ven-a-Care purchased Abbott's dextrose, sodium</p>	<p style="text-align: right;">Page 390</p> <p>1 everybody's schedules, we're not going to attempt 2 to have Mr. Jones authenticate every document 3 that Ven-a-Care has produced and try to do that 4 here at this deposition. I'm more than happy to 5 work with you to find ways to stipulate and 6 negotiate the authenticity of documents before 7 trial, if that's necessary.</p> <p>8 MR. BREEN: I don't anticipate that to 9 be an issue. If you are aware, though, of any 10 document or group of documents that you have any 11 question as to whether or not it is a Ven-a-Care 12 business record in the ordinary course of 13 business as a pharmacy, or a Ven-a-Care business 14 record in the context of its investigation, or a 15 record that's not a Ven-a-Care business record, 16 it may have been in their possession, that you 17 think may be an issue, an evidentiary issue, I 18 think we ought to try to address it. But I'm not 19 aware of any of those issues.</p> <p>20 MR. COOK: Nor am I.</p> <p>21 MR. BREEN: That's the only thing in 22 this case that I could contemplate might be an</p>

Miami, FL

<p style="text-align: right;">Page 391</p> <p>1 issue when it comes to authentication.  2 MR. LAVINE: The United States will  3 work with you in the same fashion.  4 MR. COOK: Sure. And I assume that Mr.  5 Jones will be available to testify at trial if it  6 were necessary, especially if the trial took  7 place here in Miami.  8 MR. BREEN: Yes.  9 MR. COOK: And subpoena power would  10 extend to Key West even if it were in  11 Massachusetts, which I don't think the rules  12 allow, under the False Claims Act.  13 MR. BREEN: I think under the False  14 Claims Act, subpoena power is nationwide.  15 Everybody.  16 BY MR. COOK:  17 Q. Mr. Jones, in 1996, Ven-a-Care filed an  18 Amended Complaint. Correct?  19 A. If it was 1996, yes.  20 Q. I don't have a copy of it, so I'm not  21 able to give you a copy of it. Abbott was not in  22 the caption of that complaint. Correct?</p>	<p style="text-align: right;">Page 393</p> <p>1 And for the record, Exhibit 415 states  2 in its first line, "Plaintiff hereby voluntarily  3 dismisses without prejudice, defendant Abbott  4 Laboratories" -- and then there is some redaction  5 tape, and the sentence continues -- "from the  6 instant action and adds as defendants" -- and  7 again, there is redaction tape -- "pursuant to  8 15(a) of the rules of civil procedure."  9 Do you see that?  10 THE WITNESS: There you go. I was  11 looking at 416.  12 BY MR. COOK:  13 Q. Do you see that the notice of  14 dismissing and adding defendants is signed by  15 your attorneys, Mr. Wampler and Mr. Breen?  16 A. Yes.  17 Q. Were your attorneys authorized to file  18 this document in court on behalf of Ven-a-Care?  19 A. Yes.  20 Q. Does this document accurately reflect  21 an action that Ven-a-Care intended to take in the  22 district court for the Southern District of</p>
<p style="text-align: right;">Page 392</p> <p>1 A. That's correct.  2 MR. COOK: If I could impose upon Mr.  3 Breen to grab the book of exhibits that contain  4 Exhibits 414 and 415.  5 MR. BREEN: Do you know what volume  6 that is?  7 MR. COOK: 414 is quite large. Volume  8 nine.  9 MR. BREEN: Here is volume nine.  10 You're talking about the orange book.  11 MR. COOK: Just volume nine. I think  12 that has 414 and 415 in it. Oh, I'm sorry.  13 THE WITNESS: This is 200s.  14 MR. COOK: Sorry, Jim. Volume 14.  15 MR. BREEN: All right.  16 MR. COOK: Volume 14 and volume 15.  17 And volume 15 contains Exhibit 415.  18 THE WITNESS: It says 414.  19 MR. COOK: 415.  20 And 415, for the record, is Ven-a-  21 Care's Notice of Dismissing and Adding  22 Defendants, dated March 28, 1997.</p>	<p style="text-align: right;">Page 394</p> <p>1 Florida?  2 MR. BREEN: Objection to form.  3 THE WITNESS: I'm sorry. Can you say  4 that again.  5 BY MR. COOK:  6 Q. Does this document accurately reflect  7 an action or a request that Ven-a-Care intended  8 to make of the District Court for the Southern  9 District of Florida?  10 MR. BREEN: Objection to form.  11 THE WITNESS: Yes.  12 BY MR. COOK:  13 Q. I don't want you to reveal any  14 communications with counsel, because I assume --  15 well, let me ask you. Did you have conversations  16 with counsel, without revealing the content,  17 before counsel filed this document on behalf of  18 Ven-a-Care?  19 A. Yes.  20 Q. So a conversation took place; and at  21 the end of that conversation, counsel had  22 authorization to file this document on your</p>

13 (Pages 391 to 394)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

<p style="text-align: right;">Page 395</p> <p>1 behalf. Correct?</p> <p>2 A. Yes.</p> <p>3 MR. BREEN: Objection to form.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Without revealing what communications 6 you had with client -- with your attorney, after 7 the end of that conversation, why is it that Ven- 8 a-Care sought to dismiss Abbott from this 9 lawsuit?</p> <p>10 MR. BREEN: I'm going to object, impose 11 the attorney-client privilege objection, and 12 instruct the witness not to answer to the extent 13 that any -- if part of his answer reveals 14 confidential communications with counsel.</p> <p>15 THE WITNESS: I'm not able to answer.</p> <p>16 BY MR. COOK:</p> <p>17 Q. Is it fair to say that you dismissed 18 Abbott from this lawsuit based upon the advice of 19 counsel?</p> <p>20 MR. BREEN: Same objection, same 21 instruction.</p> <p>22 MR. COOK: Are you instructing him not</p>	<p style="text-align: right;">Page 397</p> <p>1 the record. The time is 9:49.</p> <p>2 BY MR. COOK:</p> <p>3 Q. After your conversation with counsel, 4 can you tell me why it was that Ven-a-Care filed 5 its notice of dismissing Abbott voluntarily on 6 March 28th of 1997?</p> <p>7 MR. BREEN: I will assert the attorney- 8 client privilege and instruct the witness not to 9 answer.</p> <p>10 BY MR. COOK:</p> <p>11 Q. There were two groups of defendants 12 listed in the notice of dismissing and adding 13 defendants on March 28, 1997. Right?</p> <p>14 MR. BREEN: Objection to form. I'm not 15 sure -- what do you mean?</p> <p>16 BY MR. COOK:</p> <p>17 Q. There was a group of defendants that 18 were being dismissed without prejudice and a 19 group of defendants that were being added in this 20 notice of dismissal. Right? They're just 21 obscured by redacting tape in this version of the 22 document. Right?</p>
<p style="text-align: right;">Page 396</p> <p>1 to answer the question? It's a yes or no 2 question.</p> <p>3 MR. BREEN: Yes. I'm instructing him 4 not to answer the question.</p> <p>5 MR. COOK: Your last instruction was 6 more --</p> <p>7 MR. BREEN: I know. It was kind of 8 vague.</p> <p>9 Actually, before moving on, can we take 10 a brief break? Because I'd like to speak to Mr. 11 Lavine for a minute before we move beyond this 12 particular topic.</p> <p>13 MR. COOK: That would be fine.</p> <p>14 THE VIDEOGRAPHER: All right. Let me 15 go off the record. The time is 9:36.</p> <p>16 MR. BREEN: Do you have any objection 17 to me talking to the witness about the privilege 18 issue?</p> <p>19 MR. COOK: No, sir, please do.</p> <p>20 (Thereupon, a recess was taken, 21 after which the following proceedings were had:)</p> <p>22 THE VIDEOGRAPHER: We're now back on</p>	<p style="text-align: right;">Page 398</p> <p>1 A. It's redacted, yes.</p> <p>2 Q. Can you tell me, did Ven-a-Care's 3 investigation reveal anything about Abbott that 4 was different from other defendants in this case?</p> <p>5 MR. BREEN: Objection --</p> <p>6 BY MR. COOK:</p> <p>7 Q. That would be significant to this 8 notice of dismissing Abbott.</p> <p>9 MR. BREEN: Objection to form. And 10 again, I would ask the witness to carefully 11 consider that question; and to the extent that 12 there was anything communicated by counsel to 13 Ven-a-Care, I would instruct the witness not to 14 answer, but to say it's on that basis. If there 15 was something separate from Ven-a-Care's relator 16 investigation, independent, that is distinct from 17 anything counsel would have advised, then the 18 witness can answer.</p> <p>19 THE WITNESS: I can't answer that.</p> <p>20 BY MR. COOK:</p> <p>21 Q. Did Ven-a-Care feel as if it had a 22 valid claim against Abbott as of March 28, 1997?</p>

14 (Pages 395 to 398)

Henderson Legal Services, Inc.

www.hendersonlegalservices.com

202-220-4158

078c2f6d-df4a-4a53-b1b3-03bc43274825

Miami, FL

<p style="text-align: right;">Page 399</p> <p>1 MR. BREEN: Objection to form.    2 THE WITNESS: Yes.    3 BY MR. COOK:    4 Q. And yet Ven-a-Care was seeking to    5 dismiss Abbott on March 28, 1997. Correct?    6 MR. BREEN: Objection to form.    7 THE WITNESS: Yes.    8 BY MR. COOK:    9 Q. At this time, as of March 28, 1997 --    10 I'm going to ask you this in a way that I hope    11 you can answer yes or no -- had Ven-a-Care's    12 investigation, in fact, shown that Abbott    13 Laboratories was not engaging in actions that    14 Ven-a-Care would characterize as marketing the    15 spread?    16 MR. BREEN: Same instruction. If the    17 witness needs clarification on the objection and    18 instruction, let me know. But same instruction    19 as to do not answer the question -- do not reveal    20 information to the extent that it requires you to    21 divulge communications with counsel. However,    22 you're free to answer the question to the extent</p>	<p style="text-align: right;">Page 401</p> <p>1 MR. BREEN: Objection to form.    2 THE WITNESS: No.    3 BY MR. COOK:    4 Q. You would contend to me that as of    5 March 28, 1997, Ven-a-Care had evidence to    6 suggest that Abbott was actively promoting the    7 difference between its AWP's and the purchase    8 price for its drugs?    9 A. Yes.    10 Q. Could you briefly describe for me the    11 nature of the evidence that Ven-a-Care had, as of    12 March 28, 1997, of such active promotion of    13 spreads.    14 A. It had its GPO prices, its price list.    15 It had prices in the catalogs that we were    16 ordering from. We knew the difference between    17 Abbott's price and Red Book price, Blue Book    18 price. The spreads were obvious.    19 Q. But you would agree with me that as of    20 March 28, 1997, Ven-a-Care certainly had no    21 evidence that Abbott was running advertisements    22 that promoted the difference between its AWP's</p>
<p style="text-align: right;">Page 400</p> <p>1 that it's based upon Ven-a-Care's non-counsel    2 investigation.    3 Does that make sense?    4 MR. COOK: Yes.    5 THE WITNESS: Could you repeat it for    6 me.    7 BY MR. COOK:    8 Q. Certainly. I can break the question    9 down a little bit.    10 You can agree with me that there are    11 companies -- and I won't name them here -- but    12 there are companies that actively promoted the    13 difference between their AWP's and the price at    14 which their drug could be purchased. Right?    15 A. Yes.    16 Q. You would agree with me that as of    17 March 28, 1997, Ven-a-Care had no evidence to    18 suggest that Abbott was among the companies that    19 for the drugs involved in this lawsuit, was    20 actively promoting the difference between    21 Abbott's AWP's and the price at which it could    22 purchase Abbott's products.</p>	<p style="text-align: right;">Page 402</p> <p>1 and its -- and its negotiated contract prices.    2 Right?    3 A. I'm sorry. What date were we talking    4 about?    5 Q. March 28th of 1997.    6 MR. BREEN: At this point, could you    7 read the question back.    8 (The question referred to was    9 thereupon read by the reporter as above    10 recorded.)    11 THE WITNESS: I don't recall.    12 BY MR. COOK:    13 Q. As of March 28, 1997, you will agree    14 with me that no sales rep or representative of    15 Abbott had expressly encouraged Ven-a-Care to    16 purchase Abbott's products because there was a    17 difference between Abbott's AWP and the price at    18 which Ven-a-Care could purchase Abbott's    19 products. Correct?    20 A. Our interaction with sales reps were to    21 meet with them. They bring catalogs -- you know,    22 the price catalogs and their contracts.</p>

Miami, FL

Page 403	Page 405
<p>1 Q. But no Abbott sales rep told you, buy  2 Abbott's product because we have a high AWP and  3 you can make a big spread between the contract  4 price and the AWP. Isn't that true?</p> <p>5 A. Dennis Walker.</p> <p>6 Q. That occurred after March 28, 1997.</p> <p>7 Correct?</p> <p>8 A. I believe so.</p> <p>9 Q. And that communication was as a result  10 of Mr. Bentley calling Abbott to request Abbott's  11 AWP's for Acyclovir. Correct?</p> <p>12 A. I don't know that he called to request  13 them. I think he called to talk to him. And as  14 a part of that conversation, he was able to get  15 that information, yes.</p> <p>16 Q. And, in fact, the facsimile that was  17 sent back indicates that the prices were being  18 provided to Mr. Bentley as Mr. Bentley requested.  19 Right?</p> <p>20 A. Do you have the facsimile that I could  21 see it? I mean, I know what you're saying and I  22 may agree --</p>	<p>1 BY MR. COOK:</p> <p>2 Q. At any time.</p> <p>3 A. Well, I've done a lot of document  4 reviews now. I've seen a lot of Abbott's  5 documents and how they market the spread. So, I  6 mean --</p> <p>7 Q. That would be document reviews that  8 you've conducted in connection with this case.  9 Right?</p> <p>10 A. Yes.</p> <p>11 Q. That wouldn't be something that Ven-a-  12 Care observed as an infusion pharmacy in the  13 marketplace. Right?</p> <p>14 MR. BREEN: Objection to form.</p> <p>15 THE WITNESS: Not in the levels of the  16 documents that we've seen.</p> <p>17 BY MR. COOK:</p> <p>18 Q. And if we were to distinguish between  19 facts that you, Mr. Jones, have learned through  20 discovery in this case and facts that Ven-a-Care  21 learned as a participant in the marketplace, what  22 you're referring to was learned through the</p>
Page 404	Page 406
<p>1 Q. It says what it says.</p> <p>2 A. Yeah. I just don't know that it said  3 that this is what you requested.</p> <p>4 Q. By the way, this interchange between  5 Mr. Bentley and Mr. Walker occurred between this  6 March 28, 1997 dismissal of Abbott and the August  7 filing of Ven-a-Care's Amended Complaint in which  8 it added Abbott in as a defendant. Correct?</p> <p>9 A. If that's the dates, you know --</p> <p>10 Q. So, as of March 28, 1997, Ven-a-Care  11 had no communications with any representative of  12 Abbott in which Abbott undertook any actions to  13 actively market the spread for its products?</p> <p>14 A. Not that I can remember.</p> <p>15 Q. Other than that one interchange with  16 Mr. Bentley and Mr. Walker relating to Acyclovir,  17 there are no other instances to which Ven-a-Care  18 complained of Abbott actively marketing the  19 spread for its products. Correct?</p> <p>20 MR. BREEN: Objection, form.</p> <p>21 THE WITNESS: What is the time frame  22 you're talking about?</p>	<p>1 discovery process. Correct?</p> <p>2 A. The documents that I'm talking about  3 now would be through the discovery process.</p> <p>4 Q. And limiting ourselves to what Ven-a-  5 Care saw as an infusion pharmacy operating in the  6 marketplace, the only instance of Abbott taking  7 any action to actively market the spread for its  8 products to which you can point is this  9 communication in August of 1997 between Mr.  10 Walker and Mr. Bentley. Correct?</p> <p>11 MR. BREEN: Objection to form.</p> <p>12 THE WITNESS: I guess if your  13 definition is active and if active means  14 marketing the spread to you -- there is passive  15 marketing the spread, and it's just marketing the  16 spread.</p> <p>17 BY MR. COOK:</p> <p>18 Q. So your answer would be yes?</p> <p>19 A. That Abbott passively marketed the  20 spread to all of its customers by sending their  21 contracts and their price lists. And there is a  22 huge difference between what the contract price</p>

Miami, FL

Page 407	Page 409
<p>1 is, what their list price is, what their AWP's 2 are.</p> <p>3 Q. And Ven-a-Care saw that, because Ven-a- 4 Care received catalogues and was able to look at 5 price lists that were available to the public. 6 Right?</p> <p>7 MR. BREEN: Objection, form.</p> <p>8 THE WITNESS: I don't know that the 9 price lists were available to the public.</p> <p>10 BY MR. COOK:</p> <p>11 Q. Compendia available to the public.</p> <p>12 A. I'm talking about Abbott's published 13 price list, and the compendia as well.</p> <p>14 Q. But in terms of actively marketing the 15 spread, as opposed to, as you describe it, 16 passively marketing the spread, the only instance 17 of Abbott actively marketing the spread that Ven- 18 a-Care witnessed, as you describe it, would be 19 this interchange between Mr. Walker and Mr. 20 Bentley. Correct?</p> <p>21 MR. BREEN: Objection, form. And 22 again, you're only talking about -- you're not</p>	<p>1 MR. COOK: We'll just yell.</p> <p>2 BY MR. COOK:</p> <p>3 Q. Mr. Jones, you understand the 4 difference that we've been discussing between 5 what you have referred to as passively marketing 6 the spread and what I refer to as actively 7 marketing the spread. Right?</p> <p>8 MR. BREEN: I'm going to object to the 9 form of that question.</p> <p>10 THE WITNESS: Well, I'm just trying to 11 understand what you mean by "actively marketing 12 the spread," which would in my mind be someone 13 coming to me, you know, showing me something, you 14 know, defining it right to my face.</p> <p>15 BY MR. COOK:</p> <p>16 Q. Let's start with that. Can you point - 17 -</p> <p>18 A. Dennis Walker.</p> <p>19 Q. Dennis Walker.</p> <p>20 Can you point to any other interaction 21 between Ven-a-Care and anyone at Abbott, a 22 representative of Abbott, relating specifically</p>
<p>1 talking about the many, many documents and 2 testimony he's seen during the course of 3 discovery.</p> <p>4 MR. COOK: I'm talking about things 5 that Ven-a-Care witnessed as an infusion provider 6 or investigating its case before the discovery 7 process started.</p> <p>8 MR. BREEN: And you're by definition 9 saying an Abbott representative talking to a Ven- 10 a-Care representative. Your question is limited 11 to that. Correct?</p> <p>12 MR. COOK: No, sir, I'm asking -- let 13 me ask the question again.</p> <p>14 MR. LYNCH: Chris, excuse me. I just 15 got an e-mail from somebody on the phone saying 16 they're having trouble hearing the witness. Can 17 you move your microphone up, perhaps.</p> <p>18 MR. COOK: It won't help. It's a 19 speaker phone. We'll just try to talk a little 20 bit louder.</p> <p>21 MR. BREEN: We'll start raising our 22 voice.</p>	<p>1 to the spread for Abbott's drugs?</p> <p>2 MR. BREEN: Objection, form.</p> <p>3 THE WITNESS: Not at this time, no.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Now, Ven-a-Care claims to be a 6 whistleblower in this case. Right?</p> <p>7 A. A relator.</p> <p>8 Q. You've used the term "whistleblower" in 9 testimony before Congress or conversations with 10 government officials; haven't you?</p> <p>11 A. Generally, I use the word "relator." I 12 may have. I don't -- I can't tell you if I have 13 or not.</p> <p>14 Q. And Ven-a-Care claims to be the 15 original source of information in this 16 litigation. Correct?</p> <p>17 MR. BREEN: Objection, form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. COOK:</p> <p>20 Q. You've looked earlier at Sellers 21 Exhibit No. 3, which is Exhibit 547, in prior 22 depositions, which is the government's First</p>

17 (Pages 407 to 410)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

Page 411	Page 413
1 Amended Complaint. You've read that on prior 2 occasions. Correct? 3 A. Pardon? 4 Q. You've read that complaint before. 5 Right? 6 A. I have read this complaint. 7 Q. And you understood it. Right? 8 A. As much as I understand anything that's 9 legal. 10 Q. And Ven-a-Care has adopted that 11 complaint. Correct? 12 A. To my knowledge, yes. 13 Q. If you could look at topic No. 3 of 14 Exhibit 708, which is our notice of -- it's my 15 November 21, 2007 letter. 16 A. Okay. 17 MR. BREEN: What is the -- do we have 18 another copy of the First Amended Complaint 19 around here? Or is it in the binder? 20 MR. COOK: It's Exhibit 547. It's not 21 in the binders. It has not been bound up yet. I 22 have one that was PDF'd to me yesterday.	1 objections to this particular designation. They 2 stand. I don't think I need to restate the 3 reasons on the record. I'm going to allow the 4 witness to respond as best he can pursuant to our 5 prior agreement to see if you can get what you 6 need out of this. But I do not believe this is a 7 proper 30(b)(6) designation the way it is stated. 8 MR. COOK: That's my understanding of 9 how Abbott has handled 30(b)(6) designations with 10 which we disagree. We've produced a witness and 11 asked the witness to testify as best we can to 12 them. So that is perfectly acceptable to me, Mr. 13 Breen. 14 BY MR. COOK: 15 Q. Do you understand what that designation 16 is asking for testimony about, Mr. Jones? 17 A. Fundamentally, if you could clarify it 18 for me, get more specific. 19 Q. Sure. Ven-a-Care, in its complaints, 20 claims to be -- direct and independent knowledge 21 of the information contained in the complaint and 22 an original source of the information. You see
Page 412	Page 414
1 MR. BREEN: I appreciate it. 2 MR. COOK: I hope it's complete. 3 MR. BREEN: Just something I can follow 4 here. 5 MR. COOK: Certainly. 6 MR. BREEN: So we're on -- 7 MR. COOK: Exhibit 708. 8 MR. BREEN: Topic -- 9 MR. COOK: No. 3. 10 BY MR. COOK: 11 Q. Topic No. 3 reads -- I'll just read it 12 for the record without the subparts -- we're 13 asking you to testify about, quote: Ven-a-Care's 14 contentions that the relator had, quote, direct 15 and independent knowledge of the information, and 16 is the, quote, original source, close quote, of 17 the information, close quote, on which the 18 allegations contained in each of the complaints 19 relating to Abbott are based. 20 Do you understand what this is asking? 21 MR. BREEN: Before we go further, I'm 22 going to pose an objection. We've already posed	1 that language quoted from the complaint. Right? 2 A. Yes. 3 Q. Can you tell me, limiting yourself to 4 the allegations in which the government has 5 intervened in the First Amended Complaint, the 6 claims in which the government has intervened -- 7 A. These claims in here. 8 Q. Yes, sir. 9 A. Okay. 10 Q. Because there are certain claims in 11 which the government did not intervene. Correct? 12 There were drugs, for example, that the 13 government didn't intervene in. They didn't 14 simply adopt Ven-a-Care's Fourth Amended 15 Complaint. Right? 16 A. Correct. 17 Q. And limiting yourself to the 18 government's First Amended Complaint and the 19 drugs that are listed in the government's First 20 Amended Complaint, can you tell me of what is it 21 that Ven-a-Care is the original source with 22 direct and independent knowledge as Ven-a-Care

18 (Pages 411 to 414)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Miami, FL

<p style="text-align: right;">Page 415</p> <p>1 contends.</p> <p>2 MR. BREEN: Same objection.</p> <p>3 THE WITNESS: Ven-a-Care, prior to</p> <p>4 filing the first complaint -- it's going to have</p> <p>5 to go back to that, because that's where the</p> <p>6 information came from -- conducted an</p> <p>7 investigation on the industry. And part of that</p> <p>8 investigation was finding out how claims are paid</p> <p>9 through the Medicare and Medicaid programs, doing</p> <p>10 comprehensive surveys through -- I think it was</p> <p>11 all 50 states. I can't tell you how many</p> <p>12 carriers were interviewed, as far as trying to</p> <p>13 find out what reimbursement was.</p> <p>14 We marshaled all of our pricing</p> <p>15 evidence that we had from every one of our GPO's</p> <p>16 at the time, our wholesalers, any direct</p> <p>17 accounts, any direct representations of price.</p> <p>18 We also were able to go to the compendia and</p> <p>19 gather the information from the compendia on the</p> <p>20 differences between what we had -- of the prices</p> <p>21 that were available to us in the marketplace as</p> <p>22 opposed to what the prices were being reported to</p>	<p style="text-align: right;">Page 417</p> <p>1 listed them out by NDC number, by strength. We</p> <p>2 put their AWP's, their direct prices if</p> <p>3 available, Ven-a-Care's prices, and the spreads</p> <p>4 available, and we did them for each of the drugs</p> <p>5 which we provided to the government. And all of</p> <p>6 this I'm talking about was provided to the</p> <p>7 government.</p> <p>8 BY MR. COOK:</p> <p>9 Q. All of this predates the filing of the</p> <p>10 complaint. Correct?</p> <p>11 A. Yes. Yes. I'm trying to --</p> <p>12 Q. What's the time frame in which this</p> <p>13 conduct -- in which these communications with the</p> <p>14 government took place?</p> <p>15 A. We started in '94, the beginning.</p> <p>16 MR. BREEN: I'm going to object to the</p> <p>17 form in terms of "these communications."</p> <p>18 MR. COOK: Sure. I can make it a</p> <p>19 little more specific.</p> <p>20 BY MR. COOK:</p> <p>21 Q. Mr. Jones, you described a number of</p> <p>22 meetings with the Office of Inspector General,</p>
<p style="text-align: right;">Page 416</p> <p>1 the marketplace for reimbursement purposes.</p> <p>2 We also had several meetings,</p> <p>3 conversations, with the OIG; more specifically,</p> <p>4 the OIG audit services out of Atlanta and its</p> <p>5 sister office out of Jacksonville. We provided</p> <p>6 information on the nature of the pharmaceuticals</p> <p>7 at issue to each of those agents. We sent</p> <p>8 contracts to them. We had multiple</p> <p>9 communications with them. We evaluated pricing</p> <p>10 for them. We actually even provided them an</p> <p>11 ability to go to a med trade show as Ven-a-Care -</p> <p>12 - posing as Ven-a-Care employees so that they</p> <p>13 could get into a med trade show and get accurate</p> <p>14 prices, which they were trying to investigate at</p> <p>15 the time. So we had a pretty close relationship</p> <p>16 with the OIG.</p> <p>17 We had a few meetings with the</p> <p>18 Department of Justice before. Let's see. It was</p> <p>19 a long time ago. I'm trying to remember</p> <p>20 everything here.</p> <p>21 We also put together our own charts.</p> <p>22 We took these drugs or similar drugs at issue, we</p>	<p style="text-align: right;">Page 418</p> <p>1 Office of Audit Services, and meetings with the</p> <p>2 Department of Justice prior to the filing of the</p> <p>3 first complaint in this case. When did the first</p> <p>4 of those meetings with the Office of Inspector</p> <p>5 General, the Department of Justice occur?</p> <p>6 A. Well, I believe in -- I'm just taking a</p> <p>7 guess -- it was early '94. It may have been '93</p> <p>8 with the OIG. The Department of Justice meetings</p> <p>9 were in '94 and '95.</p> <p>10 Q. Is it your understanding that the</p> <p>11 Office of Inspector General, Office of Audit</p> <p>12 Services, was conducting an investigation in</p> <p>13 order to determine what the actual prices in the</p> <p>14 marketplace were for drugs, including those named</p> <p>15 in the First Amended Complaint?</p> <p>16 MR. BREEN: Objection to form.</p> <p>17 THE WITNESS: That was a part of an</p> <p>18 investigation, yes.</p> <p>19 BY MR. COOK:</p> <p>20 Q. Was there a larger aspect of the</p> <p>21 investigation that you could describe?</p> <p>22 A. Well, they also were looking at the</p>